

**L.J. Logistics, Inc., a successor in interest to and/or alter ego of Preferred Unlimited, Inc. and International Brotherhood of Teamsters, Local 710, AFL-CIO.** Case 13-CA-38854

July 15, 2003

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by International Brotherhood of Teamsters, Local 710, AFL-CIO (the Union) on September 25, 2000, the General Counsel issued a complaint on August 15, 2001, against Preferred Unlimited Ltd./L.J. Logistics Inc.<sup>1</sup> The complaint alleged that the Respondent had violated Section 8(a)(1) and (3) of the Act by threatening employees with unspecified reprisals because they engaged in union and/or protected concerted activities, and by discharging employee Chris Charnot because he assisted the Union and engaged in concerted activities. Preferred Unlimited Ltd./L.J. Logistics, Inc. did not file an answer to the complaint.

On September 17, 2001, Respondent L.J. Logistics, Inc. entered into a settlement agreement (agreement) that was approved by the Regional Director for Region 13 on September 18, 2001. Under the terms of the agreement, the Regional Director's approval constituted withdrawal of the complaint and any answers that were filed to it. The agreement required the Respondent to post a notice to employees regarding the complaint allegations and to make Charnot whole by paying him a total of \$6500 in 12 weekly installments to be remitted to Region 13. The agreement also contains the following provisions:

For the purpose of this matter before the National Labor Relations Board only, L.J. Logistics, Inc. admits that it is a successor to Preferred Unlimited, Inc.

The Successor further agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Successor, including but not limited to, failure to make timely installment payment of monies as set forth in the Settlement Agreement, the Regional Director for Region 13 of the National Labor Relations Board for and on behalf of the General Counsel of the National Labor Relations Board may re-issue complaint in this matter which encompasses only

the allegations set forth in the instant charge. Thereafter, on motion for summary judgment by the General Counsel, which the Successor agrees not to oppose, any Answer filed by the Successor shall be deemed withdrawn and, thereupon, the Board may, without necessity of trial, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations, adverse to the Successor on all issues raised by the pleadings, and issue an order providing a full remedy for the violations so found as is customary to remedy such violations, not limited to provisions of this Settlement Agreement. The parties hereto further agree that a Board Order and U.S. Court of Appeals Judgment may be entered hereon *ex parte*.

By letter sent on October 31, 2001, the compliance officer for Region 13 asked the Respondent to comply with the terms of the settlement agreement by remitting overdue payments. The letter further reminded the Respondent that the final payment would be due on November 16, 2001.

By letter dated November 2, 2001, the compliance officer again asked the Respondent to comply with the terms of the settlement agreement by remitting overdue payments. The letter stated that the outstanding amount due under the settlement agreement was \$2700, and concluded with a warning that "final payment must be received by November 16, 2001." Since its payment made on October 12, 2001, the Respondent has not made any additional payments to the Region.

Thereafter, on January 14, 2002, the Union filed an amended charge. On February 4, 2002, the General Counsel issued a reissued and amended complaint against L.J. Logistics, Inc., a successor in interest to and/or alter ego of Preferred Unlimited, Inc. (the Respondents), alleging the same violations of Section 8(a)(1) and (3) of the Act as those alleged in the August 15, 2001 complaint. The Respondent did not file an answer to the reissued and amended complaint.

On February 25, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. The General Counsel submits that the Respondents defaulted on the settlement agreement by failing to make required payments, and that the allegations of the reissued complaint should, therefore, be deemed admitted as true. On February 27, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

<sup>1</sup> The initial complaint in this proceeding issued on November 9, 2000, against Preferred Unlimited, Ltd. On November 21, 2000, the Regional Office received an undated answer to the initial complaint from Preferred Unlimited, Ltd.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondents have failed to comply with the settlement agreement by failing to remit the agreed-upon backpay amount due Christopher Charnot. Consequently, pursuant to the provisions of the settlement agreement set forth above, we find that the allegations of the complaint are true.<sup>2</sup>

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondents, corporations with an office and place of business in Cicero, Illinois, have been engaged in the business of intermodal trucking and incidental storage of commodities. During the calendar year preceding issuance of the reissued and amended complaint, a representative period, the Respondents derived gross revenues in excess of \$500,000 for conducting their business operations, and performed services valued in excess of \$50,000 outside the State of Illinois.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

On an unknown date, Respondent L.J. Logistics, Inc. was established by Respondent Preferred Unlimited, Inc. as a disguised continuation of Preferred Unlimited, Inc. We find that Respondent L.J. Logistics, Inc. and Respondent Preferred Unlimited, Inc. are alter egos and a single employer within the meaning of the Act.

On an unknown date, Respondent L.J. Logistics, Inc. purchased the business of Preferred Unlimited, Inc., and since then has continued to operate the business of Preferred Unlimited, Inc. in basically unchanged form, and has employed, as a majority of its employees, individuals who were previously employees of Preferred Unlimited, Inc. We find that L.J. Logistics, Inc. has continued the employing entity and is a successor to Preferred Unlimited, Inc.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Anthony Spano held the position of the Respondents' supervisor, and has been a supervi-

sor of the Respondents within the meaning of Section 2(11) of the Act and an agent of the Respondents within the meaning of Section 2(13) of the Act.

On about September 15, 2000, the Respondents, by Anthony Spano, at its Cicero, Illinois facility: (1) threatened employees with unspecified reprisals because they engaged in union and/or protected concerted activities; and (2) discharged employee Christopher Charnot, and since that date has refused to reinstate him.

The Respondents discharged Charnot because he assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondents have interfered with, restrained, and coerced employees, and have discriminated in regard to the hire, tenure, terms, and conditions of employment of its employees, thereby discouraging membership in a labor organization, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(1) and (3) by discharging Christopher Charnot, we shall order the Respondents to make Charnot whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. In this regard, Respondent L.J. Logistics, Inc. agreed in the settlement agreement that it would pay Charnot a total of \$6500 to cover the period from his discharge until the effective date of the settlement agreement. The General Counsel's motion states that there is an outstanding balance in the amount of \$2700. Accordingly, the Respondents shall remit this amount to the Region for payment to Charnot.

We find, however, that the backpay due Charnot should not be limited to this amount. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could issue an Order "providing a full remedy for the violations so found as is customary to remedy such violations, not limited to provisions of this Settlement Agreement." Thus, under this language, it is appropriate to provide the "customary"

<sup>2</sup> *JAE Consulting & Development*, 326 NLRB No. 40 (1998) (not published in Board volumes); *U-Bee, Ltd.*, 315 NLRB 667 (1994).

remedies of reinstatement, full backpay, expungement of the Respondents' personnel records, and notice posting.<sup>3</sup>

The additional backpay due Charnot shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>4</sup> However, because we shall order the Respondents to pay the liquidated remedy specified in the settlement agreement, the applicable backpay period will commence on September 18, 2001, the day the Regional Director approved the settlement agreement. We find it necessary to impose this limitation to prevent an unintended double recovery for the period running from the date that Charnot was discharged to the effective date of the settlement agreement.

We also shall order the Respondents to offer Charnot full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

In addition, the Respondents shall be required to expunge from their files any and all references to the unlawful discharge, and to notify Charnot in writing that this has been done and that the discharge will not be used against him in any way.

#### ORDER

The National Labor Relations Board orders that the Respondents, L.J. Logistics, Inc., a successor in interest to and/or Alter Ego of Preferred Unlimited, Inc., and Preferred Unlimited, Inc., Cicero, Illinois, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening their employees with unspecified reprisals because they engaged in union and/or protected concerted activities.

(b) Discharging employee Christopher Charnot, and refusing to reinstate him because he assisted the Union

and engaged in concerted activities, and to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to Region 13, the payment of \$2700 to be disbursed to Charnot in accordance with the September 18, 2001 settlement agreement, and make him whole for any loss of earnings and other benefits suffered since September 18, 2001, as a result of the Respondents' discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, offer Charnot full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Within 14 days from the date of this Order, remove from their records any reference to the unlawful discharge of Charnot and, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at their facility in Cicero, Illinois, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall

<sup>3</sup> The General Counsel has requested, in his Motion for Summary Judgment, that the Board order "the payment of \$2,700 in liquidated damages, and such other relief deemed appropriate and necessary by the Board."

<sup>4</sup> In the complaint, the General Counsel seeks an order requiring the Respondents "to reimburse any discriminatee entitled to a monetary award in this case for any extra [F]ederal and/or [S]tate income taxes that would, or may result from the lump sum payment of the award." This aspect of the General Counsel's proposed order would involve a change in Board law. See, e.g., *Hendrickson Bros., Inc.*, 272 NLRB 438, 440 (1985), *enfd.* 762 F.2d 990 (2d Cir. 1985). In light of this, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by affected parties. See *Kloepfers Floor Covering, Inc.*, 330 NLRB 811 fn. 1 (2000). Because there has been no such briefing in this no-answer case, we decline to include this additional relief in the Order here.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since September 15, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten our employees with unspecified reprisals because they engaged in Union and/or protected

concerted activities with International Brotherhood of Teamsters, Local 710, AFL-CIO.

WE WILL NOT discharge employee Christopher Charnot and refuse to reinstate him because he assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to Region 13 \$2700 to be disbursed to employee Charnot in accordance with the September 18, 2001 settlement agreement, and make him whole for any loss of earnings and other benefits suffered since September 18, 2001, as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, offer Charnot full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privilege previously enjoyed.

WE WILL, within 14 days from the date of this Order, remove from our records any reference to the unlawful discharge of Charnot, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

L.J. LOGISTICS, INC., A SUCCESSOR IN INTEREST  
TO AND/OR ALTER EGO OF PREFERRED  
UNLIMITED, INC.